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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,477	10/16/2001	Frank Wheeler	MKM1	5146

7590 01/28/2004

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EXAMINER
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VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/978,477

Applicant(s)

WHEELER ET AL.

Examiner

Steve M Varner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,8-10,17 and 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-45 is/are allowed.
- 6) ☒ Claim(s) 2,4-7 and 11-16,18-20,22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

Claims 1, 3, 8-10, 17, 21, are cancelled

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4-7, 11, 12, 16, 18-20, 22-25, are rejected under 35 U.S.C. 102(b) as being anticipated by Gee.

Regarding claims 2, 4-7, 11, 12, 18-20, 22-25, the first and second members are not positively claimed; therefore, the relationships of the clip to the first and second member need not be found. Gee shows a planar base plate (3) and a guide (2) depending from the base plate, a first arm (7) extending along a longitudinal axis substantially transverse to the base plate comprising a first bearing surface and a second arm (8) extend from the base plate substantially in the same direction as the first arm, comprising a second bearing surface. Gee shows a guide (2) defining an opening (9) in at least one of the arms, which is slotted. The clip is unitary. (Fig. 2)

Regarding claim 16, the first and second members are not positively claimed; therefore, the relationships of the clip to the first and second member need not be found. Gee shows a planar base plate (3) and a guide (2) depending from the base plate comprising a first arm (6) extending substantially transverse to the base plate and

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a second arm (3) extending from the base plate oriented substantially in the same direction as the first arm.

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gee.

Gee shows the basic claimed structure. Gee does not show indicia in the form of an alignment mark or shaker tab indicating a nominal position of the retainer. Indicia in the form of an alignment mark or shaker tab indicating a nominal position of the retainer are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use indicia since this would indicate the nominal position of the retainer.

***Allowed Claims***

Claims 26-45 are allowed.

Claims 26, 31, 35, 36, are allowed for a first track, a second track, a plurality of studs, a clip, and a fastener.

Claims 27-30 depend from claim 26 and are therefore allowed.

Claims 32-34 depend from claim 31 and are therefore allowed.

Claims 37, 38, are allowed for the arms being noncoplanar.

Claims 39-45 depend from claim 38 and are therefore allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wynar presents a corner construction and wallboard backer bracket therefore. Quillin teaches a clip for retaining adjacent panels in a planar relationship. Swanquist shows a device for attaching electrical boxes to metal studding.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703 305-7687  
for regular communications.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is 703 308-  
1113.

SV  
January 22, 2004

A handwritten signature in black ink, appearing to be a stylized 'W' or 'V' with a long vertical stroke extending upwards from the right side.A handwritten signature in black ink, appearing to be 'C. D. Friedman' in a cursive style.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600